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By email to CELA@fec.gov

November 8, 2016

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 7150
New Yorkers Together

CELA

2016 NOV -8 PM 8:28

Dear Mr. Jordan:

I am writing on behalf of respondent New Yorkers Together ("NYT") in response to your letter dated October 18, 2016, which enclosed an October 11 complaint ("the Complaint") from Edward F. Cox ("Cox"), with attachments.

NYT is registered as a political committee with the New York State Board of Elections ("NYSBOE") (ID# C02018). Cox is the Chairman of the New York State Republican Committee and the Complaint uses its address. See <http://www.nvgop.org>.

The Complaint alleges that an NYT mailer attached to the complaint that twice urges voters to "VOTE NO ON HANNON" – referring to New York State Senate candidate Kemp Hannon ("Hannon") – is an independent expenditure under the Federal Election Campaign Act due to its references to national Republican Party presidential nominee Donald J. Trump ("Trump"), so the mailer both is reportable to the Commission and triggers other obligations under the Federal Election Campaign Act ("the Act"). However, the mailer cannot be an independent expenditure because it does not expressly advocate the election or defeat of a clearly identified federal candidate.

An independent expenditure is defined as "an expenditure by a person...expressly advocating the election or defeat of a clearly identified candidate...that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents." 52 U.S.C. § 30104(17). See also 11 C.F.R. § 100.16(a). The mailer contains what the Act would define as express advocacy only regarding the state candidate, Hannon. The mailer contains no express advocacy against Trump, under either prong of the Commission's definition of that term.

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First, the mailer contains no so-called "magic words" regarding Trump. See 11 C.F.R. § 100.22(a). Second, the mailer cannot "only be interpreted by a reasonable person as containing advocacy for the election or defeat of [Trump]...." See *id.*, § 100.22(b). The mailer portrays Trump's positions on abortion, states that "Kemp Hannon shares Trump's out-of-touch values," describes Hannon's record on abortion, and twice urges readers to "VOTE NO ON HANNON." The only way a reader can do that is to vote for Hannon's State Senate opponent, not vote against a federal candidate. The mailer can be reasonably read for what it was, an explicit plea to defeat *Hannon* on the basis of Hannon's record on abortion both on its own terms and as that record reflects Trump's "values" and rhetoric concerning the abortion issue. The mailer's unfavorable depiction of Trump on that issue cannot be classified as express advocacy of *Trump's* electoral defeat. Accordingly, it is neither the case that "[t]he electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning," or that "[r]easonable minds could not differ as to whether [the mailer] encourages actions to elect or defeat [Trump] or encourages some other kind of action." See *id.* The "other kind of action" that can be plainly gleaned from the mailer is to vote against *Hannon*.

Cox also alleges that NYT failed to register with the Federal Election Commission ("FEC" or "Commission"), and to comply with the ACT's disclosure and disclaimer requirements. But Cox fails to allege facts showing that NYT has received more than \$1,000 of "contributions" or made more than \$1,000 of "expenditures" under the Act, see 52 U.S.C. § 30101(4) and 11 C.F.R. § 100.5(a), or that NYT has a "major purpose" to influence federal elections. See generally FEC, Supplemental Explanation and Justification, "Political Committee Status," 72 Fed. Reg. 5595 (Feb. 7, 2007). All of NYT's activities are a matter of public record, in the form of its filings with NYSBOE. (To view them, access <https://www.elections.ny.gov/recipients.txt.html> and follow the prompts.) Absent political committee status, NYT had no obligation to disclose anything to the Commission about the mailer, and an Act-compliant disclaimer would be required only if either NYT were a political committee or the mailer expressly advocated against Trump, neither of which is the case.

Finally, Cox speculates that respondents' communication may have been coordinated with a federal candidate or violated other Act provisions. Such speculation without a shred of supportive fact plainly warrants no further action by the Commission.

For these reasons, NYT respectfully requests that the Commission find no reason to believe that NYT has violated the Act and dismiss the Complaint.

Respectfully submitted,



Laurence E. Gold

Counsel for Respondent
New Yorkers Together

cc: New Yorkers Together